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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 09/925,216   | 08/08/2001  | Clement G. Taylor    | DIVA/I38CON1        | 3383             |
| 56015  | 7590        | 04/24/2006           | EXAMINER            |                  |
| PATTERSON & SHERIDAN, LLP/<br>SEDNA PATENT SERVICES, LLC<br>595 SHREWSBURY AVENUE<br>SUITE 100<br>SHREWSBURY, NJ 07702 |             |                      | BOAKYE, ALEXANDER O |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 2616                |                  |

DATE MAILED: 04/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                                      |                                      |  |
|------------------------------|--------------------------------------|--------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>09/925,216 | <b>Applicant(s)</b><br>TAYLOR ET AL. |  |
|                              | <b>Examiner</b><br>ALEXANDER BOAKYE  | <b>Art Unit</b><br>2616              |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 August 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 14-24 is/are allowed.
- 6) ☒ Claim(s) 2-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>08/8/01</u> . | 6) <input type="checkbox"/> Other: _____  |

***Claim Rejections - 35 USC § 101***

**1. 35 U.S.C. 101 reads as follows:**

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 2-13 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. More specifically, claims 2-13 recite a data structure per se and it has been held that claim to data structure per se is non statutory. See Warmerdam, 33 F. 3d at 1361, 31 USPQ2d at 1760. See also MPEP section 2106.

***Allowable Subject Matter***

**2. Claims 14-24 are allowable.**

The following is a statement of reasons for the indication of allowable subject matter: The prior art of record (US Patent # 5,541,852) relates to packet video communications and more particularly to variable bit-rate packet video communications and constant bit rate bit stream. The prior art of record (US Patent # 6,438,596) relates to video on demand system that presents users with a selection list of proposed videos for which server and network resources are available to immediately serve the selected video. As to claims 14-24, the prior art of record does not teach a method for providing a program stream, comprising: retrieving, from a mass storage device in response to a program request from a user, respective segments of at least one of a variable bit rate (VBR) program stream and a constant low bit rate (CLBR) program stream; and

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providing at least one of the VBR and the CLBR program stream segments to a communications link adapted to serve the requesting user in accordance with bandwidth availability indicia; the VBR program stream comprising a first plurality of VBR coded bitstream segments, the CLBR program stream comprising a second plurality of CLBR bitstream segments, the VBR and CLBR program streams comprising information associated with the requested program.

### Conclusion

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexander Boakye whose telephone number is (571) 272-3183. The examiner can normally be reached on M-F from 8:30am to 6:00pm.

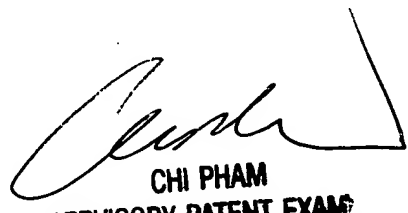
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chi Pham, can be reached on (571) 272-3179. The fax number is (703) 872-9306. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Electronic Business Center numbers 866-217-9197 and 703-305-3028.

Alexander Boakye

Patent Examiner

AB

4/19/06

  
CHI PHAM  
SUPERVISORY PATENT EXAMINER  
ELECTRONIC BUSINESS CENTER  
4/19/06